

Friday, 22 November 1946

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INTERNATIONAL MILITARY TRIBUNAL  
FOR THE FAR EAST  
Chambers of the Tribunal  
War Ministry Building  
Tokyo, Japan.

PROCEEDINGS IN CHAMBERS

On

Applications of the following Accused for  
the production of witnesses and documents under the  
Charter:

Paper No. 572 of SHIGEMITSU, Mamoru  
Paper No. 559 of SHIMADA, Shigetaro  
Paper No. 555 of SHIRATORI, Toshio  
Paper No. 557 - Application of Prosecution  
exemption Rule 6(b) (1) re: Documents 405, et.al.

Before:

HON. SIR WILLIAM WEBB,  
President of the Tribunal and  
Member from the Commonwealth  
of Australia.

Reported by:

Fred T. Abram  
Court Reporter, IMTFE

Appearances:

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FOR THE PROSECUTION SECTION:

MR. SOLIS HORWITZ

FOR THE DEFENSE SECTION:

MR. BEN BRUCE BLAKENEY, Counsel for the  
Accused UMEZU, Yoshijiro  
MR. OWEN CUNNINGHAM, Counsel for the  
Accused OSHIMA, Hiroshi  
MR. CHARLES B. CAUDLE, Counsel for the  
Accused SHIRATORI, Toshio  
MR. E. R. HARRIS, Counsel for the  
Accused SHIMADA, Shigetaro  
MR. HIROTA, Yoji, Counsel for the  
Accused SHIRATORI, Toshio  
MR. MIURA, Kazuichi, Counsel for the  
Accused SHIGEMITSU, Mamoru  
MR. NARITOMI, Nobuo, Counsel for the  
Accused SHIRATORI, Toshio  
MR. YANAI, Hisao, Counsel for the  
Accused SHIGEMITSU, Mamoru

FOR THE OFFICE OF THE GENERAL SECRETARY,  
IMTFE:

MR. CHARLES A. MANTZ, Clerk of the Court  
MR. H. W. DELANEY, Deputy Clerk of the Court  
JUDGE E. H. DELL, Legal Adviser

The proceeding was begun at 0900.

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THE PRESIDENT: This is paper 557, an application by the prosecution under Rule 6 (b) (1) in respect to documents 405, 409, 3448, and 5333. What is the view of the defense?

MR. HORWITZ: Mr. President, this is an application of Mr. Justice Mansfield. He is unavoidably detained, so if there is no objection to it we would like to have the matter postponed until Monday morning, when he can be here.

THE PRESIDENT: Well, who appears for the defense on this?

MR. CUNNINGHAM: I would like to have it put over.

THE PRESIDENT: We will adjourn it until Monday morning.

The next is paper 572, an application by the accused SHIGEMITSU for witnesses. Who appears?

MR. BLAKENEY: By request of Mr. Furness, I am appearing for him, together with Mr. YANAI, the Chief Counsel.

THE PRESIDENT: Have you taken proofs from these witnesses, Mr. Blakeney.

MR. BLAKENEY: My understanding is that all these witnesses have been interviewed and written statements have been taken from at least three of them, one of whom has given an affidavit, but only one.

THE PRESIDENT: The first name seems familiar, TAKAKA?

MR. BLAKENEY: Yes, sir. He has testified here before and has given an affidavit. As to the others, they are all readily available, either in Tokyo or the vicinity and have been interviewed, as I have said.

THE PRESIDENT: Yes. I will make the order for the subpoena. Are you asking for documents also.

MR. BLAKENEY: Yes, sir. There is one document at the back page, that is, on page 2 of the application. This is a document from which excerpts have already been put in and I believe your Honor will remember their bearing and relevance. Mr. Furness desires to use additional parts from it.

THE PRESIDENT: I will give the order for the document.

The next paper is 559, which is an application by the accused SHIMADA for subpoena for certain witnesses and for documents. Who appears?

MR. McDERMOTT: I do. Edward P. McDermott,

your Honor. The first four witnesses on this application have already been asked for by Mr. Brannon. The other witnesses have not been interviewed by me personally, but they have been interviewed by my Japanese counsel, and they live in the vicinity of Tokyo and their testimony is relevant and material.

THE PRESIDENT: They have given something in writing, have they?

MR. McDERMOTT: Yes.

THE PRESIDENT: Including those that Mr. Brannon asked for?

MR. McDERMOTT: I don't know anything about Mr. Brannon.

THE PRESIDENT: But all yours have?

MR. McDERMOTT: Yes.

THE PRESIDENT: Well, I will make the order as prayed.

The next paper is 555, an application on behalf of the accused SHIRATORI for production of witnesses. Who appears?

MR. CAUDLE: I do, sir, Caudle.

THE PRESIDENT: Mr. Caudle.

MR. CAUDLE: May it please your Honor, two witnesses we didn't have the names of at the time. I would like permission to amend this application to

include the names of Hans Ulrich Marchtaler and Heinrich Stahmer, German nationality, and former Secretary of the German Embassy, and is now residing somewhere near Atami, and the second one is Heinrich Stahmer, who is also a German now incarcerated at Sugamo, who was a special envoy.

THE PRESIDENT: Have you examined all these witnesses?

MR. CAUDLE: No, sir. Some I have; some I haven't been able to get hold of.

THE PRESIDENT: What witnesses have you statements from?

MR. CAUDLE: I think we have from OHOSHI and SAITO.

THE PRESIDENT: Only two?

MR. CAUDLE: Yes, sir. All of these with the exception of Mr. Ott, who, I understand is in China, reside in and around Tokyo.

THE PRESIDENT: What about these two you have examined?

MR. CAUDLE: They were formerly employed in the Foreign Office and they discussed its activities. The first is the spokesman for the publicity -- the head of the Bureau of Information for the Foreign Office.



THE PRESIDENT: I will give a subpoena for those two and the rest facilities for interrogation.

MR. CAUDLE: All right, sir.

THE PRESIDENT: You are not asking for documents?

MR. CAUDLE: Yes, I am getting around to that.

THE PRESIDENT: I suppose the defense have considered giving much of their evidence on affidavit, leaving it to the prosecution to ask for the witness to be called for cross-examination?

MR. CUNNINGHAM: I can't speak as to the group on it, because each individual has his own idea about how his case should be presented. As far as I am concerned, I would much rather have one live witness than seven affidavits, and I think several of the defense counsel feel the same way, because that has been our practice and that is the way we try cases and prove our facts.

THE PRESIDENT: Well, we have let the prosecution give evidence on affidavit and that concession as a matter of course will be extended to the defense.

MR. CAUDLE: These Gormans at Atami and the ones at Hakone, I went down to question them, but

they wouldn't answer any questions without special permission from the IPS, and I came back to Mr. Eugene Williams and Mr. Tavenner and they said the IPS had no policy whatsoever in that regard and that such was not the case, but somebody, one Mr. Bolze, came to see Mr. Williams about it, or Mr. Tavenner, and he was so advised. Whether he advised the others I don't know, Mr. Tavenner seemed to think he would. I was wondering whether it would be necessary to get a statement from them or someone to allay their fears.

THE PRESIDENT: Well, this order should do that. You have a copy of it with you?

MR. CAUDLE: Yes, sir.

THE PRESIDENT: Has the Court a seal, Mr. Mantz?

CLERK OF THE COURT: The Secretary has a seal, official seal. The Court merely has a stamp. By that I mean an exhibit for the record stamp. The General Secretary has his own official seal.

THE PRESIDENT: A seal on a document is sometimes more convincing than a document without a seal.

CLERK OF THE COURT: That is quite right, sir.

MR. CAUDLE: May I bring up about the



documents?

THE PRESIDENT: Yes.

MR. CAUDLE: I have a list of some -- it runs into sixty, and practically all of them I think I can get without a subpoena, but there were so many we haven't had an opportunity to screen them all, and I would like to ask permission of the Court to forego this phase of it until I can see if I can get them all. There has been so many of them I felt reluctant to put them in the application.

THE PRESIDENT: Well, that is the end of the business for today?

CLERK OF THE COURT: That is all, sir.

(Whereupon, at 0915, the proceeding was concluded.)

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